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IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1945.

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**No. 763**

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HUGH GREER CARRUTHERS,  
*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,  
*Respondent.*

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**PETITION FOR REHEARING ON PETITION  
FOR CERTIORARI.**

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*To the Honorable Harlan F. Stone, Chief Justice, and the  
Associate Justices of the Supreme Court of the United  
States.*

Now comes Petitioner, Hugh Greer Carruthers, and respectfully prays for a rehearing of his Petition for Writ of Certiorari.

By the Petition for Certiorari this Court was informed that an important constitutional question was involved which should be decided by it. That question was: did the submission to a jury in a mail fraud case, *as an issue of fact*, of the question whether representations of certain matters involving the teachings of the petitioner relating to breathing, silence (meditation and prayer) and posi-

tions of persons in sleep, come within the field of religion.<sup>1</sup>

The Petition for Certiorari pointed out the indictment charged that *it was a part of the alleged scheme* to defraud in connection with the sale of securities to members and prospective members of defendant's organization The Neological Foundation to "create and organize clubs, associations, groups and classes within and among the members of the said Neological Foundation, and among the persons intended to be defrauded, for the purpose of further and more detailed study and benefit *from the teachings, philosophy, and creed* of the said Neological Foundation and the said defendants (including petitioner)" (Pet. for Cert. pp. 7, 18) (Rec. 7).

The Petition for Certiorari also pointed out that the prosecutor, in order to prove the allegations of the indictment brought out by the examination of one of the government's own witnesses, and by cross-examination of numerous witnesses for the petitioner, that his teachings included certain matters with respect to such breathing, silence and positions of persons in sleep, without attempting to establish the falsity of any of such representations concerning such matters; and that in his argument to the jury, knowing that the Court was going to submit to the jury the question whether representations with respect to such matters came within the field of religion the prosecutor referred to "Neological nonsense that was spawned in the last few years." When exception was made to such argument the Court overruled it stating that the point was saved (R. 443, Pet. for Cert. p. 24).

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<sup>1</sup> The question was properly raised in the trial court by exceptions to the charge to the jury (R. 455-456) and by a specific request that the jury be instructed that the matters referred to came within the field of religion (R. 465-466).

The Petition also pointed out the Court's charge to the jury in which he recognized that a question involving the right to the free exercise of petitioner's religion was involved in the case by instructing the jury in an abstract way that any representations of matters pertaining to religion were to be accepted as true by the jury, but in dealing with the particular subject matter of breathing, silence and positions of persons in sleep he instructed the jury that it was *for them*, to determine whether such matters came within the field of religion (Pet. for Cert. pp. 2 and 3).

The Petition further pointed out that upon the conclusion of the charge petitioner's counsel specifically requested the Court to charge as a matter of law that the representations of the petitioner concerning or relating to the subjects of breathing, silence and positions of persons during sleep were matters within the field of religion as taught by him, and that the truth or falsity of such representations could not be questioned in any way by the jury in arriving at its verdict in the case. This the court refused to do and stated that such matters were being submitted to the jury *as a question of fact* (R. 465-466, Pet. for Cert. p. 18). The petitioner was tried, as the record shows, for his religious beliefs and his exercise thereof, by the making of such representations, along with other charges.

The Government's brief in Opposition to the Petition for the Writ of Certiorari, in dealing with the religious question, challenged neither the correctness of the statements of law made in the petition nor the importance of the question presented. The Government met petitioner's contention by presenting its argument in such a way as to induce belief by this Court that there was no record basis for a consideration of the question whether petitioner had been deprived of his right to the free exercise of his

religion guaranteed to him by the First Amendment by asserting "the indictment, the evidence, the prosecutor's summation and the Judge's charge made it abundantly clear to the jury that petitioner was being tried for his business activities alone and not for his preachings" (Government's brief in Opposition, p. 15). It further sought to induce such belief that there was no record basis for a consideration of the question whether petitioner had been deprived of his right to the free exercise of his religion guaranteed to him by the First Amendment by asserting that "petitioner was convicted, not for what he taught, but for practicing ordinary mundane fraud in commercial transactions" (Government's brief in Opposition, p. 16). Thus by the Government's brief in opposition the record under review was made to *appear*, to this Court, different from the way it appeared to the trial judge, the jury and the Circuit Court of Appeals. In its brief filed in the Circuit Court of Appeals the Government took an entirely different position from the one which it presented to this Court in its brief in opposition to the Petition for certiorari. In the brief filed by it in the Court of Appeals, the Government took the position that excerpts from certain letters written by the petitioner to his members indicated that he did not believe "that the Neological Foundation was a religious organization and that he was teaching religious subjects" (Government brief CCA, p. 34). The government in that brief sought to support its contention by referring to excerpts from certain letters of the petitioner to members of his organization which it was contended indicated that he did not believe he was teaching a religion or operating a religious society (Government's brief, CCA, pp. 35-36). In that same brief the government took the position "*it is clear that the jury could not possibly infer (from the instruction in question) that they were authorized to determine as a question of fact any part of the evidence which*

*bordered on religious belief or doctrine*" (Government brief, CCA, p. 38). The Circuit Court of Appeals in its decision adopted the contention of the government's brief that the excerpts from the letters in question were sufficient to raise a question of fact as to whether the representations of the defendant concerning the matters above referred to constituted religion as taught by petitioner. It was upon this basis that the Circuit Court of Appeals held the trial judge did not err in his charge. (*U. S. v. Carruthers*, 152 Fed. (2) 512, 517, 518.) In other words the Court of Appeals reached its conclusion that the rulings of the trial court in this matter were correct by stating that there was some evidence to show that the petitioner was not making a religious appeal to his members (Rec. 511, 512, 152 Fed. (2) 517). In our Petition for Certiorari we pointed out (p. 19) that the letters from which the excerpts were taken did not justify the conclusion reached by the Court of Appeals. We further pointed out (p. 21) that even if there were a real issue whether *all* of petitioner's activities in directing the affairs of the Neological Foundation were in fact of a religious nature, it does not follow that the representations as to breathing, silence and positions of persons during sleep were not matters within the field of religion as taught by petitioner (Pet. for Cert. p. 21).

The Government's brief in opposition in this Court abandoned the argument made by it in the Circuit Court of Appeals and in effect repudiated the position taken by the Circuit Court of Appeals in its opinion simply by presenting the appearance of a record which did not in fact exist.

Conceding for the sake of argument, that the record under review contained sufficient evidence from which a jury might have found that the defendant had been guilty of commercial fraud in the sale of securities, nevertheless



petitioner was entitled to have his guilt or innocence of such fraud determined by the jury unaffected by the finding or belief of the jury that misrepresentations in the religious field were false or fraudulent. *U. S. v. Ballard*, 322 U. S. 78.

We submit that even with the element of commercial fraud involved in the case, petitioner was entitled to invoke the constitutional guarantee of his right to religious freedom contained in the First Amendment, as to those teachings claimed to have been a part of the alleged scheme to defraud and upon evidence of which the government sought to obtain a conviction. To argue, as the government has done in its brief in opposition, that "petitioner was convicted, not for what he taught, but for practicing ordinary mundane fraud in commercial transactions" (Government brief in opposition, p. 16) is simply a different method of stating that because the record would sustain a verdict of guilty, therefore any errors committed cannot be said to be prejudicial. The recent holding of this Court in *Bollenbach v. United States*, No. 41, October Term 1945, opinion rendered January 28, 1946, is sufficient authority for the proposition that the contention of the government that the petitioner was convicted not for what he taught but for practicing ordinary mundane fraud in commercial transactions, is wholly without merit. We submit that neither the belief of government counsel nor of appellate judges, in the guilt of petitioner however justifiably engendered by the dead record, can be substituted for the ascertainment of guilt by a jury under appropriate judicial guidance. There is no way of telling from an examination of the dead record in this case whether or not the jury convicted petitioner because it believed that the representations made by him concerning breathing, silence and positions of persons in sleep, did not come within the field of religion and were false. The trial judge told the jury that "The burden in

this case is upon the Government to prove beyond a reasonable doubt that the alleged false pretenses, representations and promises were made as charged in the indictment. *It is not, however, necessary that the Government should prove all of the pretenses, representations and promises charged, but it is essential that one or more of them must be proved beyond a reasonable doubt*, and that the scheme to defraud charged in the indictment should be substantially established by the evidence" (R. 461). In view of this instruction the jury might well have convicted petitioner upon its belief that the teachings with respect to breathing, silence and positions of persons in sleep did not come within the field of religion and that such representations were false.

In the matter of petitioner's teachings of Yogi Doctrines regarding breathing, silence and positions in sleeping, at least no problem should exist as to their classification within the field of religion. Their very unorthodox character and their peculiarly compelling attraction to the followers of petitioner are demonstrative of the element of faith, fundamental to any concept of religion. (See 29 Encyclopedia Americana, p. 638.)

In a portion of Montesquieu's famous Persian letters, it is written that a man prayed to God daily, "Lord," he said, "I do not understand any of those discussions that are carried on without end regarding Thee; I would serve Thee according to Thy Will; but each man whom I consult would have me serve Thee according to his" (Letter XLVI, Usbek to Rhedi, at Venice, Universal Classic Library, 1901). It is conceivable that a jury composed of Mohammedans whose religious philosophy is such that all other believers are infidels and non-religious, might conclude that petitioner's teachings here were clearly not religious in character because of his favorable references to Jesus Christ and Christianity. This hypothetical rea-

soning would operate on the theory that such teachings as petitioner's could not be religious views, since not in accord with those of the jury.

Your Petitioner regards it his duty to himself, to some 256 religious denominations in the United States, to 67,327,719 American churchgoers and to their religious leaders, presently engaged in teaching their respective and dissimilar views of the Good Life, to bring before this Court a question of such vast importance that millions of Americans are affected in a controversy involving an interpretation of the First Amendment to the Constitution.<sup>1</sup> Therefore, your petitioner respectfully asks for further consideration by this Court of the denial of the petition for a writ of certiorari.

We respectfully submit that because government's brief in opposition to the petition for certiorari made it appear, whereas the contrary is the fact, that there was no question presented by the record involving a denial of petitioner's constitutional right to religious freedom, a rehearing should be granted and the petition for certiorari allowed.

Respectfully submitted,

WALTER BACHRACH,

WALTER H. MOSES,

*Attorneys for Petitioner.*

I do hereby certify that the foregoing petition is presented in good faith and not for the purpose of delay.

WALTER BACHRACH.

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<sup>1</sup> World Almanac and Book of Facts, 1945 at p. 366, published by New York World Telegraph.

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**SECOND PETITION FOR REHEARING OF  
PETITION FOR CERTIORARI.**

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**WALTER BACHRACH,**

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231 South LaSalle Street,

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SECOND PETITION FOR REHEARING OF  
PETITION FOR CERTIORARI.

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*To the Honorable Harlan F. Stone, Chief Justice, and the  
Associate Justices of the Supreme Court of the United  
States.*

Now comes Petitioner, Hugh Greer Carruthers, and respectfully prays for a rehearing of the order of this Court of March 11, 1946 denying the Writ of Certiorari.

This petition for rehearing is based upon the fact that on March 25th this Court granted certiorari in *Ballard v. U. S.*, No. 782 this term, and on the same day denied

the petition for rehearing to the denial of the writ of certiorari of petitioner herein. As manifestly appears from the petition for certiorari and the former petition for rehearing herein, the primary question of paramount importance upon which the petition for certiorari herein is based involves the practical application in felony cases in the Federal Courts of the principles laid down by this Court in its earlier decision in *Ballard v. U. S.*, 322 U. S. 78. After that decision by this Court was rendered, the *Ballard* case was remanded to the Circuit Court of Appeals for the 9th Circuit wherein a further decision was rendered, 152 F. 2d 941, purporting to apply the law as laid down by this Court.

No injury would result to the United States from a consideration of the application of the decision of this Court in the *Ballard* case, in this case along with the review which this Court has granted on March 25th to the petitioners in the *Ballard* case. The joint consideration by this Court of the application of its earlier decision on these two records would obviously be of substantial assistance to this Court, in properly drawing the line between the constitutional prohibition of criminal prosecutions based upon religious beliefs and action pursuant thereto, and the power of Congress to make criminal, conduct of American citizens, which is intertwined with efforts to popularize and proselytize unorthodox religious beliefs.

Counsel for petitioner recognize in full measure their responsibility as officers of this Court as well as attorneys for petitioner and present this application in his behalf only after mature consideration of their obligations in both capacities and only because they believe that the conviction of petitioner herein was accomplished in a manner violative of the first amendment to the Constitution as interpreted and expounded in the decisions of this Court.

Wherefore, petitioner respectfully prays for a rehearing of the order of this Court of March 11, 1945 denying certiorari.

Respectfully submitted,

WALTER BACHRACH,

WALTER H. MOSES,

*Attorneys for Petitioner.*

I do hereby certify that the foregoing petition is presented in good faith and not for the purpose of delay.

WALTER BACHRACH.